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ATTORNEY FOR 21ST MORTGAGE CORPORATION

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

|                     |   |                   |
|---------------------|---|-------------------|
| IN RE:              | § | CASE NO. 18-50015 |
|                     | § |                   |
| ANASTACIO DELACRUZ, | § | CHAPTER 13        |
|                     | § |                   |
| Debtor.             | § |                   |

**OBJECTION TO CONFIRMATION OF PLAN**

TO THE HONORABLE BANKRUPTCY JUDGE:

**COMES NOW**, 21<sup>st</sup> Mortgage Corporation, Movant, and would show this Court as follows:

(1) This is an Objection to Confirmation of the Debtor's Chapter 13 Plan, a motion pursuant to Sections 506(a) and Sections 1325(a)(5)(B)(ii) of the Bankruptcy Code to modify Movant's treatment in Debtor's Chapter 13 Plan.

(2) The jurisdiction of this Court in this contested matter is founded in 28 U.S.C.A. Section 1471(c)(e).

(3) At the initiation of the Chapter 13 bankruptcy cause of action, the Debtor was in possession of real property described in Deed of Trust attached hereto as Exhibit "A", together with a 2015 CMF Manufacturing, Inc. manufactured home, Serial Numbers BEL002766TXA and BEL002766TX; HUD Label/Seal Numbers NTA1672934 and NTA1672935, together with all furnishings, fixtures and appliances listed in the contract.

(4) Said Debtor has continued and is now in possession of said property and utilizing same as their principal residence.

(5) The Movant is the holder of a secured claim against the Debtor. A copy of the Consumer Loan Note, Security Agreement and Disclosure Statement is attached as Exhibit “B”. A copy of the Statement of Ownership and Location is attached as Exhibit “C”.

(6) The payoff balance as of January 2, 2017 was approximately \$69,000.00 to \$70,000.00.

(7) The Plan is confusing. 21<sup>st</sup> Mortgage Corporation is identified twice in the section of the Plan for “Secured Creditors” which states to refer to paragraph C; in one row of this section it states that “estimated amount” of the claim is \$53,079.00 and it states that the “estimated value” is also \$53,079.00 and it states the interest rate is 0%; in a second row of this section it states that “estimated amount” of the claim is \$9,259.38 and it states that the “estimated value” is also \$9,259.38 and it states the interest rate is 0%. Paragraph C states that secured creditors shall be paid a principal amount equal to the value of their collateral or the amount of their net claim, whichever is less, plus interest thereon at the applicable rate. It is unclear if this is in fact a pay direct (although 21<sup>st</sup> Mortgage Corporation is not identified in the “direct payments” section of the Amended Plan) and perhaps debtor intends to pay pre-petition arrears through the Trustee. To the extent this is an attempted cram-down to either \$53,079.00 or \$9,259.38 at 0% interest, 21<sup>st</sup> Mortgage Corporation objects as the value and interest rate are too low but, more importantly, an attempted cram-down is inappropriate per 11 U.S.C. 1322(b)(2). 21<sup>st</sup> Mortgage has a security interest in the subject real property which is debtor’s residence and a cram-down is improper. To the extent this is an attempt to pay the full claim amount through the Trustee, 21<sup>st</sup> Mortgage Corporation objects as the amounts (\$53,079.00 or \$9,259.38) and

interest rate are too low; the payoff in 21<sup>st</sup> Mortgage Corporation's proof of claim which shall be filed will be approximately \$69,000.00 to \$70,000.00 and the contract rate of interest is 9.47%.

**WHEREFORE, PREMISES CONSIDERED,** Movant prays that this Court deny confirmation of the Debtor's Plan as currently filed and for all other relief as is just and proper at law or in equity.

Respectfully submitted,

/s/Shawn K. Brady  
Shawn K. Brady  
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Attorney for 21<sup>st</sup> Mortgage Corporation

**CERTIFICATE OF SERVICE**

On the 8<sup>th</sup> day of January, 2018, a true and correct copy of the foregoing Objection to Confirmation of Plan was delivered via ECF to the attorney for the Debtor, Seth Crosland, 1848 Norwood Plaza, Suite 205B, Hurst, Texas 76054; by ECF to the Chapter 13 Trustee, Mary K. Viegelahn, 10500 Heritage Blvd., Suite 201, San Antonio, Texas 78216; and by ECF to parties requesting notice.

/s/Shawn K. Brady  
Shawn K. Brady

**AFFIDAVIT FOR SWORN ACCOUNT AND FOR ADMISSION OF BUSINESS  
RECORDS RULE 803(6) FEDERAL RULES OF EVIDENCE AND TITLE 28  
SECTION 1732 U.S. CODE, JUDICIARY AND JUDICIAL PROCEDURE**

STATE OF TEXAS                               §  
   §  
COUNTY OF COLLIN                       §

BEFORE ME, the undersigned authority, on this day personally appeared SHAWN K. BRADY, who, being by me duly sworn, deposed as follows:

"My name is SHAWN K. BRADY. I am over the age of 18, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

"I am the attorney and the custodian of the records of 21<sup>st</sup> Mortgage Corporation, concerning the account of Anastacio Delacruz. Attached hereto are twenty-nine (29) pages of records from 21<sup>st</sup> Mortgage. These said twenty-nine (29) pages of records are kept by 21<sup>st</sup> Mortgage in the regular course of business, and it was the regular course of business of 21<sup>st</sup> Mortgage for an employee or representative of 21<sup>st</sup> Mortgage, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original."

/s/Shawn K. Brady  
SHAWN K. BRADY

**SUBSCRIBED AND SWORN TO BEFORE ME** on the 8<sup>th</sup> day of January, 2018, to which witness my hand and official seal.

/s/Shelly Cantrell  
Notary Public, in and for the  
State of Texas

“Notary Seal”

My Commission Expires: September 9, 2018